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| 09/538,750      | 03/30/2000  | Jay S. Walker        | 00-017              | 8975             |
| 22927           | 7590        | 05/04/2006           |                     | EXAMINER         |
|                 |             |                      |                     | HAQ, NAEEM U     |
|                 |             |                      | ART UNIT            | PAPER NUMBER     |
|                 |             |                      | 3625                |                  |

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/538,750             | WALKER ET AL.       |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Naeem Haq              | 3625                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 July 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-55 and 65-68 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-55 and 65-68 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicants' response to the non-responsive action mailed on October 28, 2005 is acknowledged. As per the telephonic interview on January 3, 2006, the non-responsive office is withdrawn and a new Office Action is presented in response to the Applicants' amendment filed on July 21, 2005. This Office Action is a Final Office Action as necessitated by the amendments filed on July 21, 2005. The claim set filed on January 30, 2006 is regarded as a copy of the amendment filed July 21, 2005.

The amendment filed July 21, 2005 is sufficient to overcome the rejection of claims 1-55, 69, and 70 under 35 U.S.C. 101. This rejection is withdrawn.

### ***Drawings***

Figures 2A and 2B should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Figures 2A and 2B show a merchant device (i.e. server) connected to a plurality of consumer devices (i.e. computers) via a communication network such as the Internet (see specification page 5, line 33 – page 6, line 21). This client-server model is old and well known in the art as evidenced by the following references:

US Patent 6,061,665 (Figure 2);

US Patent 5,907,547 (Figure 1);

US Patent 6,092,053 (Figure 1);

US Patent 6,125,352 (Figure 1);

US Patent 5,794,207 (Figure 1);

US Patent 6,041,308 (Figure 1).

Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

### ***Specification***

The amendment filed July 21, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Claims 1, 65, and 68 recite the following limitations: "...first transaction...", "...a second consumer who was not involved in the first transaction...", and "...in a second transaction..." These limitations are not supported by the original disclosure.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-55 and 65-68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 65, and 68 recite the following limitations: "...first transaction...", "...a second consumer who was not involved in the first transaction...", and "...in a second transaction..." These limitations fail to comply with the written description requirement because these limitations are not supported by the original disclosure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 12-20, 48, and 49, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. These claims recite conditional statements which render the claims indefinite because the scope of the claims is unclear when the conditional statements are false.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims 1, 2, 12, 13, 48, 52, 65, 67, and 68 are rejected under 35 U.S.C. 102(e) as being anticipated by Pallakoff (US 6,269,343 B1).**

Referring to claim 1: Pallakoff teaches a method of facilitating a transaction comprising:

- determining a first transaction involving a first consumer and a merchant (col. 8, lines 31-32: "...determine the final price each buyer will have to pay for the product being offered..."; col. 8, lines 41-43: "...each potential buyer is charged...");
- determining a transferable item price established between the first consumer and the merchant during the first transaction (col. 8, lines 28-40: "The system then uses the Aggregate Demand (calculated at block 68), and the set of

*Demand Thresholds and associated prices provided by the seller when setting up the offer (block 31), to determine the final price each buyer will have to pay for the product being offered (block 72). For example, if a seller offered 250-499 soccer balls for \$15 each or 500-700 soccer balls for \$10 each, and if the Buying Group members express a desire to buy (in aggregate) 272 soccer balls (i.e. their Aggregate Demand is 272), then the price they would have to pay would be \$15 per ball. But if the Aggregate Demand by the end of the offer period met or exceeded 500 units, they would only have to pay \$10 per ball", col. 8, lines 41-43: "...each potential buyer is charged..."). The Applicants' specification teaches that a "transferable item price" is a price at which a merchant is willing to sell an item (see specification page 5, lines 16-18);*

- associating the transferable item price with the first consumer (col. 8, lines 41-47: *"After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer (block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any)."*);
- determining, via a computing device, that the first consumer has transferred the transferable item price to a second consumer who was not involved in the first transaction, thereby determining that the second consumer is entitled to purchase, in a second transaction, an item in exchange for payment of an amount based on the transferable item price (col. 8, lines 41-53: *"After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer*

(block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any). The system keeps track of which buyers were successfully charged. In some cases, credit card charges may not go through--for example, if a potential buyer's credit card has expired or is over its credit limit. In alternative embodiments, the system can automatically create invoices for buyers who prefer to be billed rather than paying by credit card"). The Applicants' specification discloses that the first consumer "transfers" the transferable item price when "...it is determined that a second...consumer...is entitled to purchase an item in exchange for payment of an amount based...on the transferable item price" (see specification page 5, lines 26-29).

Referring to claim 2: Pallakoff teaches all the limitations of claim 1 as noted above. Furthermore, Pallakoff teaches determining the transferable item price associated with the first consumer (col. 8, lines 31-32: "...determine the final price each buyer will have to pay for the product being offered...")

Referring to claim 12: Pallakoff teaches all the limitations of claim 1 as noted above. Furthermore, Pallakoff teaches determining if the transferable item price may be associated with the first consumer (col. 8, lines 41-53: "After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer (block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any). The system keeps track of which buyers were successfully charged. In some cases, credit card charges may not go through--for example, if a potential buyer's credit card has expired or is over its credit limit.")

Referring to claim 13: Pallakoff teaches all the limitations of claim 12 as noted above. Furthermore, Pallakoff teaches that the determination if the transferable item price may be associated with the first consumer is based on information associated with the first consumer (col. 8, lines 41-53: “*After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer (block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any). The system keeps track of which buyers were successfully charged. In some cases, credit card charges may not go through--for example, if a potential buyer's credit card has expired or is over its credit limit.”*”)

Referring to claim 48: Pallakoff teaches all the limitations of claim 1 as noted above. Furthermore, Pallakoff teaches that the first consumer is allowed to purchase the item at the transferable item price even if the second consumer purchases the item at the transferable item price (col. 8, lines 41-53: “*After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer (block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any).*”)

Referring to claim 52: Pallakoff teaches all the limitations of claim 1 as noted above. Furthermore, Pallakoff teaches arranging for the second consumer to purchase the item in exchange for providing payment of the amount based on the transferable item price (col. 8, lines 41-53: “*After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer (block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any).*”)

Referring to claims 65 and 68: Claims 65 and 68 are rejected under the same rationale as set forth above in claim 1.

Referring to claim 67: Pallakoff teaches all the limitations of claim 65 as noted above. Furthermore, Pallakoff teaches a communication device coupled to said processor and adapted to communicate with at least of: (i) a consumer device. (ii) a merchant device, and (iii) a controller (Figure 1).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-8, 10-17, 19-32, 35-46, 48-55 and 65-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halbert et al (US Patent 6,101,484) in view of Pallakoff (US 6,269,343 B1).**

Referring to claims 1-7, 27, 29, 35, 55 and 65-68, Halbert teaches a method, apparatus, and medium storing instructions for the method of facilitating a transaction, comprising:

- determining a first transaction involving a first consumer and a merchant (col. 4, lines 4-6: “...we use the term ‘co-op’ to refer to the online manifestation of buying groups who have committed to purchase a certain product within a specified price...”; col. 4, lines 42-44: “Each such offer is guaranteed by the respective buyer’s credit card at the time it is offered.”);

- determining a transferable item price established between the first consumer and the merchant during the first transaction (col.4, lines 23-24:  
*"Ending Price: The price specified at the end of the co-op, which represents the price at which all offers are accepted."*). The Applicants' specification teaches that a "transferable item price" is a price at which a merchant is willing to sell an item (see specification page 5, lines 16-18);
- associating the transferable item price with the first consumer (col. 9, lines 11-12: *"The buyer enters an offer which specifies the maximum price at which he is willing to purchase the product"*, col. 9, lines 47-49: *"The final co-op price is fixed and applied to all offers specifying maximum prices at or above the final co-op price."*, col. 9, lines 15-17, lines 36-41);
- determining the transferable item price associated with the consumer (column 4, lines 23-24; column 9, lines 44-49);
- wherein the determination of the transferable item price is based on an offer received from the consumer to purchase the item in exchange for payment of an offer price, the transferable item price being based on the offer price (column 3, lines 4-8; column 7, lines 45-65);
- wherein the offer received from the consumer comprises a binding offer and the offer price is defined by the consumer (column 1, lines 39-42; column 4, lines 40-46);
- wherein the consumer defines the offer price via entering the offer price (column 9, lines 11-13);

- wherein said associating is only performed if the offer received from the consumer is accepted (column 9, lines 44-58);
- wherein the determination of the transferable item price is based on the consumer purchasing the item in exchange for payment of a purchase price, wherein the transferable item price is based on the purchase price (column 9, lines 44-58).
- determining that a consumer is entitled to purchase an item in exchange for payment of an amount based on the transferable item price (column 9, lines 47-58);

Halbert does not teach determining, via a computing device, that the first consumer has transferred the transferable item price to a second consumer who was not involved in the first transaction, thereby determining that the second consumer is entitled to purchase, in a second transaction, an item in exchange for payment of an amount based on the transferable item price. However, Pallakoff teaches this limitation (col. 8, lines 41-53):

*"After determining the final price (block 72), each potential buyer is charged (block 73) using the credit card information previously supplied by each buyer (block 66). Each buyer is charged the price times the number of units they are buying (as they indicated previously in block 65), plus any applicable tax and shipping & handling charge (if any). The system keeps track of which buyers were successfully charged. In some cases, credit card charges may not go through--for example, if a potential buyer's credit card has expired or is over its credit limit. In alternative embodiments, the system can automatically create invoices for buyers who prefer to be billed rather than paying by credit card".*

Furthermore, the Applicants' specification discloses that the first consumer "transfers" the transferable item price when "...it is determined that a second...consumer...is

entitled to purchase an item in exchange for payment of an amount based...on the transferable item price" (see specification page 5, lines 26-29). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Pallakoff into the invention of Halbert. One of ordinary skill in the art would have been motivated to do so in order to get more people to join the co-op of Halbert so that the price of the product could be further reduced, as taught by Pallakoff (col. 10, lines 43-56). The cited prior art does not explicitly teach that a second consumer is specified by the first consumer. However, Halbert teaches a "co-op" (column 4, lines 4-9) which inherently has a first and second consumer since the invention of Halbert requires a group of consumers. Furthermore, Halbert teaches that consumers are encouraged to invite their friends to participate in the co-op (column 11, lines 38 and 39). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to allow a first consumer to specify a second consumer. One of ordinary skill in the art would have been motivated to do so in order to obtain a better final price by increasing the size of the co-op. Halbert also inherently teaches that the second consumer is entitled to purchase the item in exchange for payment of the amount because the first consumer transferred an entitlement to the transferable item price to the second consumer. Halbert teaches that the final group price is applied to all members of the group (i.e. first and second consumers) (column 4, lines 4-9, lines 23 and 24; column 9, lines 36-58). The Applicants' specification teaches that the first consumer transfers an entitlement to the transferable item price to the second consumer when it is determined that the second consumer is entitled to

purchase an item in exchange for payment of an amount based on the transferable item price (see specification page 5, lines 26-29). Halbert teaches determining whether the second consumer qualifies for the transferable item price (column 9, lines 1-58).

Referring to claim 8, Halbert does explicitly teach that the transferable item price is based on an auction bid received from the first consumer. However, please note that Halbert's method is based on the "reverse auction" model. Therefore it is inherent in the method of Halbert that the transferable item price is based on an auction bid since the method of Halbert is a type auction.

Referring to claim 10, Halbert teaches that the item price varies over time and the determination of the transferable item price is based on a time that the first consumer provides an offer (column 7, lines 45-67; column 8, lines 1-60).

Referring to claim 11, Halbert does not explicitly teach that the item is sold to consumers at a retail price and the transferable item price is different than the retail price. However, Halbert teaches that his method increases a supplier's overall profit by lowering the price per unit and increasing the sales volumes (column 3, lines 4-24). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to increase overall profits by reducing the price per unit below the retail price and increasing sales volume. One of ordinary skill in the art would have been motivated to do so in order to make more money.

Referring to claims 12 and 13, Halbert teaches that determination if the transferable item price may be associated with the first consumer is based on information associated with the first consumer (column 9, lines 11-17, lines 50-54).

Referring to claims 14 and 41, Halbert does not explicitly teach that the information associated with the first or second consumer comprises a credit rating. However, Halbert teaches that the information associated with first consumer is a “credit number and other pertinent information.” (column 9, lines 11-13). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to associate a credit rating with the first user. One of ordinary skill in the art would have been motivated to do so in order to ensure that the consumer had the resources to submit a legitimate offer.

Referring to claims 15, 21, 22, and 28, Halbert teaches that the transferable item price associated with the first consumer is based on a bid submitted by a second consumer and vice versa (column 9, lines 1-58). Halbert further teaches that the information is received from the first and second consumers via a web page (column 7, lines 6-21).

Referring to claims 16 and 17, Halbert teaches that the transferable item price is based on an item for sale (column 1, lines 17-26; Figure 3A; column 7, lines 45-63).

Referring to claims 19, 20, 45, and 46, Halbert teaches that the transferable item price is associated with the first consumer based on a task performed by the first consumer wherein the task comprises providing information (column 9, lines 11-17).

Referring to claims 23-26, 36-38, 54, and 55 Halbert does not explicitly teach the limitations of these claims. However, Halbert teaches a method for facilitating a transaction by allowing individuals to aggregate their buying power into a buying co-op. Halbert also teaches that once a critical mass of buyers is achieved a final price is

determined. This final price is based on the total number of acceptable offers received from buyers. Thus Halbert's invention is designed to lower the unit price of an item while increasing the effective yield (profit) for a seller as more offers are received from buyers. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to increase the buying co-op by having the first buyer identify a plurality of additional buyers by e-mail, telephone number, etc. to the system of Halbert. One of ordinary skill in the art would have been motivated to do so in order to allow the co-op to grow as large as possible by inviting additional buyers into the co-op so that the buyers obtained the lowest unit price while the seller obtained maximum yield.

Referring to claim 30, Halbert does not explicitly teach receiving the transferable item price code from the second consumer. However, Halbert teaches receiving a bid from the second user (column 9, lines 11-13). Furthermore, Halbert teaches that the bid may become a discount price if a critical mass is achieved (column 9, lines 44-58). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to receive a transferable item price code from the second consumer if a critical mass was met in the invention of Halbert. One of ordinary skill in the art would have been motivated to do so in order to promote a sale if a critical mass was achieved in the invention of Halbert.

Referring to claim 31, Halbert teaches verifying the transferable item price code received from the second consumer (column 9, lines 15-17).

Referring to claim 32, Halbert does not explicitly teach comparing the transferable item price code transmitted to the first consumer and the transferable item price code received from the second consumer. However, Halbert teaches that the bid received from the second consumer is compared to the final co-op price to determine who is eligible for the discount price (column 9, lines 44-58). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to compare the first and second consumer's transferable item price code in order to determine who was eligible for the discount price, as taught by Halbert.

Referring to claims 39, 40, 42-44, Halbert teaches that the determination that the second consumer is entitled to purchase the item in exchange for payment of the amount based on the transferable item price is based on a restriction associated with the transferable item price (column 1, lines 17-22; column 8, lines 62-64).

Referring to claims 48, 52, and 53, Halbert teaches that the first consumer is allowed to purchase the item at the transferable item price even if the second consumer purchases the item at the transferable item price (column 9, lines 47-58).

Referring to claim 49, Halbert does not explicitly teach that the first consumer is prevented from purchasing the item at the transferable item price if the second consumer purchases the item at the transferable item price. As noted above, the conditional "if" statement renders the claim indefinite. The Examiner will attempt to examine the claim as best as possible. Halbert teaches that a price curve for a product declines as the number of acceptable offers increase. Halbert provides an example of his invention where the product is a Mitsubishi™ 36" high definition television set that

is limited to 1,000 units (column 7, line 45 – column 8, line 60). The price curve continues to decline until all 1,000 units are sold at a price that maximizes the seller's yield (Figure 3E, item "114"; column 8, lines 53-60). Nowhere does Halbert explicitly state that his invention stops receiving offers from buyers once a set number of units have been sold. This is because Halbert's system is designed to maximize a seller's yield. In order to do so, Halbert's system must receive more than 1,000 offers. Indeed Halbert even states that some offers are rejected if they are below a minimum price (column 7, lines 59-63). Therefore, the situation where one consumer is prevented from purchasing an item at the transferable item price if another consumer purchases the item at the transferable item price is an obvious outcome in the method of Halbert. If Halbert's system receives more than 1,000 offers above the minimum price then these offers are considered valid offers and will affect the price curve. However, in the example given above, the seller has only 1,000 units to sell. In such a case, some buyers will be prevented from buying the item at the transferable item price even though the transferable item price was applied to their offer. This is true because Halbert's method does not terminate the co-op based on the number of valid offers received but rather on when the seller has maximized its yield. For this reason, this limitation is rendered obvious. The motivation for such an outcome is provided by Halbert (i.e. to maximize the seller's yield).

Referring to claims 50 and 51, Halbert teaches that the transferable item price is dynamic and changes based on time (column 7, lines 45-67; column 8, lines 1-60).

Referring to claim 61, Halbert teaches that the final price is applied to all buyers making an offer above the final co-op price (column 9, lines 44-56). In order for a buyer to make an offer, Halbert requires the buyer provide his or her credit card information (column 9, lines 9-13).

**Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halbert et al (US Patent 6,101,484) in view of Walker et al. (US Patent 6,119,100).**

Referring to claim 9, Halbert does not teach that the transferable item price (i.e. final price) is based on a price at which a third party offers to sell a similar item. However, Walker teaches that it is well known in the art for a merchant to lower a price in response to a price reduction by a competitor (third party) (column 2, lines 6-8). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to allow the merchant of Halbert to base the final price on a price at which a third party offers to sell a similar item. One of ordinary skill in the art would have been motivated to do so in order to allow the merchant of Halbert to maintain its market share.

**Claims 18 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halbert et al (US Patent 6,101,484) in view of Pallakoff (US Patent 6,269,343 B1).**

Referring to claim 18 and 47, Halbert teaches the limitations of claims 12 and 1 as noted above. Halbert does not teach that the transferable item price may be associated with the first consumer based on payment of a transfer fee amount by the first consumer. However, Pallakoff teaches a method of on-line marketing wherein a

consumer pays a commission after receiving a discount from a seller (column 5, lines 38-45; column 9, lines 46-67; column 10, lines 1-12; column 12, lines 16-29). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Pallakoff into the method of Halbert. One of ordinary skill in the art would have been motivated to do so in order to allow the system operator to make money.

### ***Response to Arguments***

Applicants arguments filed July 21, 2005 have been fully considered but they are not persuasive.

Referring to Figures 2A and 2B: The Applicants have argued that the Examiner has not established any *prima facie* showing that Figures 2A and 2B are prior art, and that there is no statutory or regulatory authority for the proposed amendment to the drawings. The Examiner respectfully disagrees. The Examiner cited six references which show the same structure as disclosed in Figures 2A and 2B of the Applicants' specification. In the response filed July 21, 2005, the Applicants did not even acknowledge the six references let alone provide any arguments to discuss how Figures 2A and 2B are different from the cited references. Furthermore, MPEP § 608.02(g) cites *Ex parte Elliott* as an authority. For these reasons, the Examiner maintains the objection to the drawings.

Applicants' arguments with respect to the art rejection have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

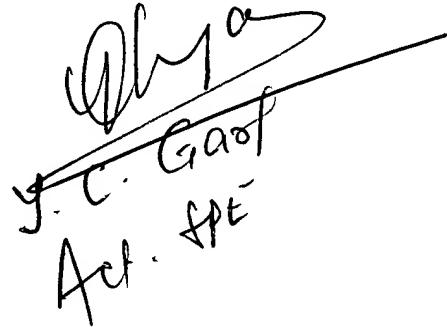
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogesh Garg can be reached on (571)-272-6756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Naeem Haq**, Patent Examiner  
Art Unit 3625

April 29, 2006



J. C. Gaof  
Act. Apr.